

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 70 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

NORMA DETERGENT PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 24/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The following questions are proposed by the Revenue, as questions of law arising from the order of the Tribunal.

1. "Whether, the Appellate Tribunal is right in law

and on facts in confirming the view of the Commissioner of Income Tax (Appeals) to the effect that the amounts with regard to kasar, sale of empty soda ash bardans should include for working out the claim under Section 80I?"

2. "Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the Commissioner of Income Tax (Appeals) adding Rs. 8,226/- being the amount of profit earned by the assessee in the sale of raw-materials to sister concern, for the computation under Section 80I?"

3. "Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the addition of Rs. 10,02,482/- in respect of Modvat credit balance not accounted for by the assessee in its books of accounts?"

We have gone through the relevant papers including the annexures, which have not been filed in this application, but by reference, incorporated from I.T.A No. 72/97, in which they were filed and which was disposed of on 22.12.1997. As regards question No.1, the authorities had found from the material on record that the tank rent and truck rent had no direct connection with the manufacturing activities and cannot be considered for relief. It was however, found that the items of kasar and sale of empty soda ash bardans, was directly connected with the manufacturing activities of the assessee and should be allowed. These are obviously findings of fact and when the Tribunal confirmed the findings of the CIT (Appeals) in holding that the truck rent and tank rent was not at all connected with the production and manufacturing activity of the assessee, no question of law can be said to be arising from such a finding.

As regards question No.2, the authorities have found that the only profit earned from the sale of raw-material by the assessee was Rs. 8,226/- and that the estimate of the Assessing Officer of 10% profit was not correct. This also would be a finding of fact, raising no question of law.

As regards the question No.3, the balance of Rs. 10,02,472/- was disallowed under this head. The CIT (Appeals) had, while considering this question relating to disallowance of unutilised balance in the excise duty Modvat account, noted that the assessee was following mercantile system of accounting. The CIT (Appeals) had

decided a similar point in Kodidas Patel's case and the Assessing Officer was directed to follow that decision in the present case also. It would appear that in view of the assessee following mercantile system of accounting, these directions were given in consonance with the earlier decision. It is brought to our notice that the Department has not challenged the decision of the Bombay Bench of the Tribunal on a similar issue in I.T.A No. 4726/Ahd/1989 in favour of the assessee, who belongs to the group of the present assessee. The Tribunal has followed that decision and confirmed the findings of the CIT (Appeals) on this question. As the Department has accepted the decision of the Bombay Bench, no such question of law arises as proposed by the applicant. This application is therefore, rejected. Rule is discharged with no order as to costs.

*/Mohandas